No. 2926

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHEW HOY QUONG,
Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, California,
Appellee.

In the Matter of the Application of Chew Hoy Quon, for a Writ of Habeas Corpus for and on Behalf of His Wife, Quok Shee.

BRIEF OF APPELLEE

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellee.

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BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

The applicant in this case applied for admission at San Francisco as the wife of Chew Hoy Quong, whom she accompanied to the United States, claiming to be the wife of said Chew Hoy Quong. It is admitted that the alleged husband, Chew Hoy Quong, is a merchant and at the time of the application was fifty-six years of age and his alleged wife twenty years of age.

This matter comes before the Court in the usual form of cases of this character, Judge Dooling having sustained the Government's demurrer interposed to the petition for writ of habeas corpus filed on behalf of applicant. There is a stipulation on file providing that the original record of the Bureau of Immigration, which contains all of the evidence taken in this case, be forwarded to the above entitled Court so that it may be considered as a part of the record in determining this case.

ASSIGNMENT OF ERRORS.

It will be noted on page 4 of the brief filed on behalf of appellant that counsel relies upon three propositions, stated as follows:

1. That the Commissioner was either (a) without power to order a rehearing of the application, on his own motion, after at a full and fair hearing applicant had established her right to enter and the examining inspector had made his favorable report thereon; or, (b) under the circumstances of this case such order constituted a manifest abuse of discretion.

2. That a full and fair hearing was not given the applicant on the re-examination of the husband and wife.

3. That the finding of the Commissioner totally disregarded the evidence and was not based on the failure to prove the relationship but was grounded

upon a mere inference, suspicion or conjecture that the applicant was being imported for an immoral purpose.

ARGUMENT

We are confronted in this case with the same proposition that is injected into practically every Immigration case that comes before this Court, namely: that the Immigration officials acted in a biased manner and did not accord the applicant a fair and impartial hearing. In fact, in this case, as in many of the other cases, counsel assumes that the investigating officers are harboring a feeling of antipathy against the Chinese race and are eager to exclude them, notwithstanding the fact that the evidence adduced would amply justify such order of exclusion, and in this connection the Government desires to take the position now that there is no such disposition exhibited on behalf of the Immigration officials, and in fact, the examinations conducted in this case will show the extreme fairness on the part of the Immigration officials in arriving at a just conclusion.

Counsel seems to dwell upon the point that the Commissioner had no power to order a rehearing of the applicant after the first examination. This, however, is an entirely erroneous view, for it is the duty of the Commissioner of Immigration to make as many investigations or to conduct as many hearings as he deems advisable in order to arrive at a proper and correct determination of the matter

before him. In this case one rehearing was ordered, and testimony taken, and the examinations brought out various discrepancies which, after a careful consideration, indicated to the Immigration officials that the relationship of husband and wife had not been properly established.

The Government submits that in a case of this character the investigating officials are in a better position to determine the matter before them than any one else. They are experienced in their examinations of aliens, thoroughly familiar with their customs and habits and are naturally in a better position to detect fraud than persons who are not so situated and so versed. It was evidently for this reason that the Immigration officials were given such unlimited power. It is true that after the first examination there was a favorable report, said report appearing on page 10 of the original record of the Bureau of Immigration on file herein, but it is also true that the examinations of said applicant and her alleged husband brought forth various discrepancies in their testimony, which no doubt justified the Secretary of Labor in finding that the relationship of husband and wife had not been sufficiently established.

On pages 60, 61 and 62 of the record of the Bureau of Immigration will be found a review of the discrepancies which appeared in the testimony of said applicant. This review reads as follows:

This Chinese girl applied for admission at San Francisco, as the wife of Chew Hoy Quong, whom she accompanied to the United States, and whose status as a merchant of a Chinese firm in San Francisco, Cal., is established. The record shows that the alleged husband entered this country in 1881, established himself as a merchant, resided here continuously until last year, when he had his status preinvestigated and went to China, leaving the port of San Francisco on May 15th, 1915, per SS. "Manchuria," and returning to the United States with the above-named applicant on September 1st, 1915, per SS. "Nippon Maru."

It is worthy of note that the alleged husband of the applicant, although 56 years of age, was never before married until last year, which event occurred shortly after his return to China. This omission or postponement on his part of compliance with the ancient and established usages and customs of Chinese until so late in life lends suspicion as to the relationship. Another damaging factor is the unsuitability of ages found in this case.

Chinese customs frown upon the marriage of old men with young girls. In addition to the foregoing suspicious circumstances, there appear the following discrepancies in the testimony of applicant and alleged husband:

A. Applicant states at two different hearings that after her marriage she lived with her husband for a period of seven months, or until the date of their departure for the United

States, at No. 20 Wah Hing St., Hongkong; that during this period her husband visited his native village a number of times, but does not remember how many, whereas the alleged husband testified positively on two occasions that he visited the village but one time.

B. Alleged husband claims to have adopted one of his brother's sons, aged about 15, for ancestral duties; that this boy, together with his natural father, visited him in Hongkong about a week before he and his wife sailed for the United States; that during this period the father and son lived on the second floor of the same building of which he and his wife occupied the third floor. On the other hand the applicant first testified that she never saw this adopted son, but later stated that he accompanied her to the steamer at the time of sailing; also that he had come to Hongkong with his natural father, but that she did not know where they slept, as they had never mentioned it.

C. In further reference to the adopted son, the alleged husband testified that during the course of the boy's stay in Hongkong, approximating one week, he made frequent visits to their home on the third floor of the same building, whereas the applicant stated that she never saw the boy except on one occasion, viz: the day of their departure, when he accompanied them to the steamer; and that he only arrived in Hongkong on the day they sailed.

D. The alleged husband testifies that in proceeding from their home to the steamer he and his alleged wife were accompanied by his

brother, his adopted son, and a member of the firm occupying the first floor of the building where he had lived since marriage, while the applicant says that there were but three men in the party, her husband, his brother, and his adopted son.

E. While applicant and alleged husband agree that they lived on the third floor of the building at No. 20 Wah Hing St., Hongkong, for approximately seven months, the latter states that the entire second floor was used as storage rooms by the firm occupying the first floor, with the exception of the last five days of his residence there, when one Wong Quock Bun, his wife, and baby moved in, and the former avers that during the entire period of her residence there the second floor was occupied by a private family, that no one moved in or out during the period, and that she never heard of the said Wong Quock Bun.

F. The alleged husband testifies that the third floor of the building, or the one on which they lived, was the top of said building, there being nothing but the roof above; that there was an outlet from his rooms to said roof, reached by means of a permanent stepladder; whereas the applicant stated there was a fourth floor to the building, occupied by a private family whose name she did not know; also that there was a stairway leading from the third to the fourth floor.

G. The alleged husband says that in their home on the third floor at No. 20 Wah Hing St., they had a metal case clock resting on the table

in their parlor; while the applicant states that the only clock they had was a large wooden one which hung on the wall in that room.

It appears to the Bureau that the most of the discrepancies in the testimony of this applicant and her alleged husband are important and material to the point as to whether or not they are husband and wife and have ever lived together at all. For instance, regarding the visit of an alleged adopted son, the statements made by the applicant are in hopeless confusion and entirely at variance with those made by the alleged husband. In an explanatory affidavit the alleged husband says that his adopted son visited the apartments of his alleged wife but did not find her at home, and that he *"assumed"* that he made a second visit, and probably found her away on that occasion also. It should be noted, however, that this allegation is in direct contradiction of his first sworn statement, wherein he says that the boy made frequent visits to applicant's apartments. In view of the custom of the Chinese women to remain in seclusion, so strongly urged by counsel, it is rather strange that the boy should have found applicant away from home on all of his frequent visits. Again, these aliens claim to have lived in the same apartments for approximately seven months, yet they disagree as to the number and kind of clocks they had in their parlor; also as to the number of floors in the building, its structure and occupancy. It appears to the Bureau that these are matters upon which there should be no question after a residence together of seven months.

The evidence taken as a whole, does not establish, in the Bureau's judgment, that QUOCK SHEE is the wife of the man seeking to secure her admission. It is accordingly recommended that the excluding decision be affirmed.

(Signed) ALFRED HAMPTON,
HMc-HB Assistant Commissioner General.

Attorneys—RALSTON & RICHARDSON.

Approved:

(Signed) LOUIS F. POST,
Assistant Secretary."

It is true, as counsel suggests in his brief, that the finding and order of the Immigration officials must be based upon evidence. There can be no doubt but that the finding and order in the present case was based upon evidence and that the various discrepancies, to which the Court's attention has been called, were sufficient to justify the order of the Secretary of Labor. The Court will not as a rule inquire into the sufficiency of the probative facts or consider the reasons for the conclusions reached by the officers.

Healy vs. *Backus,* 221 Fed. 358, 365,
White vs. *Gregory,* 213 Fed. 768,

and unless there was a manifest abuse of discretion or unfairness on the part of the Immigration officials, the proceedings are not open to attack.

Low Wah Suey vs. *Backus,* 225 U. S. 460,

U. S. vs. *Ju Toy,* 198 U. S. 253; 49 L. Ed. 1040,

Chin Yow vs. *U. S.* 208 U. S. 8, 52,

Tang Tun vs. *Edsell,* 223 U. S. 673,

and if the findings of the Secretary of Labor are based upon evidence and no unfairness is shown, they are final and conclusive.

Ekiu vs. *U. S.,* 142 U. S. 651,

Lee Lung vs. *Patterson,* 186 U. S. 170,

The Japanese Immigrant case, 189 U. S., p 86,

Zakonaite vs. *Wolf,* 226 U. S. 272.

In *Lee Lung* vs. *Patterson, supra,* the Court said:

> "It was decided in Nishimura Ekiu's case that Congress might intrust to an executive officer the final deetrmination of the facts upon which an alien's right to land in the United States was made to depend, and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted or to controvert its sufficiency. This doctrine was affirmed in *Lem Moon Sing* vs. *U. S.,* 158 U. S. 538, 39 L. Ed. 1082; 15 Supt. Ct. Rep. 967 and at the present term in *Fok Young Yo* vs. *U. S.,* 185 U. S. 306."

In *Low Wah Suey* vs. *Backus,* the Court said:

> "A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair; that the action of the executive officers was such as to prevent a fair investigation, or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final. *U. S.* vs. *Ju Toy,* 198 U. S. 253; *Chin Yow* vs. *U. S.,* 208 U. S. 8, *Tang Tun* vs. *Edsell,* 223 U. S. 673."

From the very nature of these cases the examination must be of a summary character.

Chin Yow vs. *U. S.* 208 U. S. 8,

Sibray vs. *U. S.,* 227 Fed. 1,

and it is impossible, and in fact it was never contemplated by the framers of the Immigration law, that the formalities of procedure and the usual rules of evidence should govern these cases.

Ex parte Garcia, 205 Fed. 53,

Fong Yue Tung vs. *U. S.,* 149 U. S. 698.

Counsel also makes a point of the refusal of the Immigration officials to permit applicant and her alleged husband to be re-examined. This point can

be answered by referring to a letter written on September 26, 1916, by the Acting Commissioner of Immigration at Angel Island to Messrs. McGowan and Worley, the attorneys representing the said applicant; said letter is as follows:

> "Replying to your communications of the 23rd and 25th instant, *in re* Quock Shee, alleged wife of a merchant, ex SS 'Nippon Maru' September 1, 1916, you are advised that your request for reopening in this case, contained in the letter first above-mentioned, must be denied for the reason that there is no apparent ground for the assumption that any contradictory statements appearing in the record were due to a misunderstanding of the questions propounded, and that the affidavit of the alleged husband is not 'new evidence' within the meaning of the regulations.
>
> The request contained in the second abovementioned letter, that you, as counsel, and the alleged husband be permitted to interview the applicant as a basis for the introduction of further evidence in support of her appeal, must also be denied, there being no authority in either the law or regulations for the granting of such a request.
>
> Respectfully,
>
> WHW/ASH
>
> Acting Commissioner."

It can readily be observed that if applicants were permitted to be re-examined in order to clear up discrepancies in their testimony, there would be no

end to the difficulties confronted by the Immigration officials. In fact, it would be an extraordinary case where aliens, after having an opportunity to discover the discrepancies in their testimony, could not give an explanation which would apparently be satisfactory but which might, and probably would, be wholly the result of a "frame-up" on their part.

A careful investigation of the record in this case, as contained in Exhibit "A", will show that the investigation was conducted fairly and impartially on the part of the Immigration officials, and that the Secretary of Labor was guided solely by said evidence in making his decision and in the absence of a showing of fraud on the part of the Immigration officials in making their investigation their finding and order should not be disturbed.

Respectfully submitted,

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CASPER A. ORNBAUN,
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Attorneys for Appellee.